

1. Commonwealth

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p>ARTICLE 10:</p> <p>1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.</p> <p>2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and</p>	<p>Migration Act 1958</p>	<p>Cth</p>	<p>5CA</p>	<p>This section defines what is meant by a "child" of a person.</p> <p>(1) Without limiting who is a child of a person for the purposes of this Act, each of the following is the child of a person:</p> <p>(a) someone who is a child of the person within the meaning of the Family Law Act 1975 (other than someone who is an adopted child of the person within the meaning of that Act);</p> <p>(b) someone who is an adopted child of the person within the meaning of this Act.</p> <p>(2) The regulations may provide that, for the purposes of this Act, a person specified by the regulations is not a child of another person specified by the regulations in circumstances in which the person would, apart from this subsection, be the child of more than 2 persons for the purposes of this Act.</p> <p>(3) Subsection (2), and regulations made for the purposes of that subsection, have effect whether the person specified as not being a child of another person would, apart from that subsection and those regulations, be the child of the other person because of subsection (1) or otherwise.</p>

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freedoms of others and are consistent with the other rights recognized in the present Convention.				
			5G	This section sets out how relationships and family members are defined.
			205	<p>Dependants of deportee</p> <p>(1) Where the Minister makes or has made an order for the deportation of a person who has a spouse or de facto partner, the Minister may, at the request of the spouse or de facto partner of that person, remove:</p> <p>...(b) the spouse or de facto partner and a dependent child or children ;</p> <p>of that person.</p> <p>(2) Where the Minister makes or has made an order for the deportation of a person who does not have a spouse or de facto partner but who does have a dependent child or children , the Minister may, at the person's request, remove a dependent child or children of the person.</p>
			199	This section deals with dependants of removed non-citizens
			87	This section states that the limit contained in section 86 does not prevent the grant of a visa to a person who applied for it on the ground that he or she is the dependent child of an Australian citizen, or the holder of a permanent visa that is in

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				effect, or a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.
	Migration Regulations 1994	CTH	Schedule 2	<p>(773.211) If the applicant has entered Australia and seeks immigration clearance, the applicant satisfies the criteria in clauses 773.212 to 773.216.</p> <p>(773.212) The applicant does not seek to remain in Australia as a refugee or on humanitarian grounds.</p> <p>(773.213) (1) The applicant is:</p> <p>(a) the spouse or de facto partner of an Australian citizen, Australian permanent resident or an eligible New Zealand citizen; or</p> <p>(b) a person who is apparently eligible for a Return (Residence) visa or Resident Return (Temporary) visa; or</p> <p>(c) a person who has entered Australia with a visa that has been cancelled on presentation in immigration clearance because the person has breached a condition that the person is not to arrive in Australia before the arrival of another person specified in the visa; or</p> <p>(d) a person who:</p> <p>(i) is a dependent child of:</p> <p>(A) an Australian citizen, an Australian permanent resident</p>

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				<p>or an eligible New Zealand citizen; or</p> <p>(B) the holder of a visa of a class set out in subclause (2); or</p> <p>(C) the holder of a visa of a class specified in subclause (3); or</p> <p>(D) the holder of a visa of a subclass specified in subclause (4); and</p> <p>(ii) arrives in Australia in the care of a person who is an Australian citizen or the holder of a visa; or</p> <p>(e) a person who:</p> <p>(i) immediately before last departing Australia, held a visa of:</p> <p>(A) a class specified in subclause (3); or</p> <p>(B) a subclass specified in subclause (4); and</p> <p>(ii) departed in circumstances in which it was not reasonably practicable to obtain a visa before departing; and</p> <p>(iii) would, if refused immigration clearance, be prevented from reunion with a close relative of the person in Australia; or</p> <p>(f) a person who:</p> <p>(i) immediately before last departing Australia, held a</p>

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				<p>Student (Temporary) visa; and</p> <p>(ii) departed in circumstances in which it was not reasonably practicable for the person to obtain a visa before departing; or</p> <p>(g) a person who:</p> <p>(i) has entered Australia without a visa that is in effect; and</p> <p>(ii) seeks to remain in Australia on a temporary basis; and</p> <p>(iii) appears to the Minister, from information in the application, to be a person:</p> <p>(A) who is eligible for the grant of a Tourist (Class TR) visa; or</p> <p>(B) who is eligible for the grant of a Visitor (Class TV) visa; or</p> <p>(C) who is, apart from the requirements of paragraph 1223A (3) (a) of Schedule 1 and clause 456.411 of this Schedule, eligible for the grant of a Subclass 456 (Business (Short Stay)) visa; or</p> <p>(D) who is, apart from the requirements of subitem 1224 (3) of Schedule 1 and clause 771.411 of this Schedule, eligible for the grant of a Transit (Temporary) (Class TX) visa.</p> <p>...</p>

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	Immigration (Guardianship of Children) Act 1946	CTH	4AAA	<p>Non-citizen child</p> <p>(1) Subject to subsections (2) and (3), a person (the child) is a non-citizen child if the child:</p> <ul style="list-style-type: none"> (a) has not turned 18; and (b) enters Australia as a non-citizen; and (c) intends, or is intended, to become a permanent resident of Australia. <p>(2) Subsection (1) does not apply if the child enters Australia in the charge of, or for the purposes of living in Australia under the care of:</p> <ul style="list-style-type: none"> (a) a parent of the child; or (b) a relative of the child who has turned 21; or (c) an intending adoptive parent of the child. <p>(3) Subsection (1) does not apply if:</p> <ul style="list-style-type: none"> (a) the child enters Australia in the charge of, or for the purposes of living in Australia under the care of, a person who is not less than 21 years of age (the adult); and (b) a prescribed adoption class visa is in force in relation to the child when the child enters Australia; and (c) the adult intends to reside with the child in a declared

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				<p>State or Territory.</p> <p>(4) A person is a non-citizen child if:</p> <p>(a) the person has not turned 18; and</p> <p>(b) a direction under section 4AA is in force in relation to the person.</p>
			6A	<p>Non-citizen child not to leave Australia without consent</p> <p>(1) A non-citizen child shall not leave Australia except with the consent in writing of the Minister.</p> <p>(2) The Minister shall not refuse to grant any such consent unless he or she is satisfied that the granting of the consent would be prejudicial to the interests of the non-citizen child.</p> <p>(3) A person shall not aid, abet, counsel or procure a non-citizen child to leave Australia contrary to the provisions of this section.</p> <p>Penalty: Two hundred dollars or imprisonment for six months.</p>

2. New South Wales

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3. Victoria

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4. Queensland

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5. South Australia

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6. Western Australia

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7. Northern Territory

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8. Tasmania

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			45	<p>Natural parent's right of access after consent.</p> <p>A parent of the child who has given consent to the adoption of the child may, notwithstanding that the Secretary is the guardian of the child under this Division, visit the child during the period during which the consent may be revoked.</p> <p>The Secretary or the principal officer of an approved agency may, by notice in writing given to a parent who has given consent the adoption of a child, restrict the occasions on which or times at which the parent may, under this section, visit the child.</p>
			47	<p>Supervision of certain children adopted overseas.</p> <p>The Secretary may supervise the welfare and interests of the child where the child is adopted in a country other than Australia and New Zealand, the adoption has been in force for a period not exceeding 12 months, either of the adoptive parents of the child had not been resident in the country in which the order was made for a continuous period of 12 months immediately before the making of that order and the child is present in Tasmania.</p>
			60	<p>Recognition of foreign adoptions.</p> <p>In Tasmania the adoption of a person, whether before or after the commencement of this section, in a non-convention or non-agreement country, that is an adoption to which this</p>

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				<p>section applied, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order made under this Act.</p> <p>To be recognised in Tasmania the adoption within the foreign country must grant the same rights to the adoptive parents as would be afforded to the child's natural birth parents.</p> <p>The adoption cannot have been rescinded.</p>
			104	<p>Taking away etc. adopted child by natural parent.</p> <p>Any person who was the father or mother of a guardian of a child but is not, by reason of an adoption of the child, to be treated in law as the father or mother or a guardian of the child who takes, leads, entices, or decoys the child away or detains the child, with intent to deprive the adoptive parent of adoptive parents of the child shall be guilty of an offence and liable to a penalty.</p>
			105	<p>Harbouring child taken from adoptive parents</p> <p>A person who receives or harbours a child on behalf of a person who, to his knowledge, has taken, led, enticed, or decoyed the child away, or is detaining the child, in contravention of section 105, is guilty of an offence</p>
	Child Protection (International Measures) Act 2003	TAS	6	<p>Jurisdiction and Child Protection Convention</p> <p>This Act is not directly relevant to Article 10 of the Convention, but establishes matters of jurisdiction and co-operation in relation to child protection and children's</p>

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				property, including arrangements for Tasmania's involvement under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at The Hague on 19 October 1996.
	Children, Young Persons and Their Families Act 1997	TAS	6	<p>Responsibilities and powers of person who has custody.</p> <p>A person (including the Secretary) who has custody, or has been granted custody, of a child has the right to have, and the responsibility for, the daily care and control of the child and have the right to make, and the responsibility for making, decisions concerning the daily care and control of the child.</p>
			55	<p>Determining what is the child's best interests.</p> <p>In any proceedings under the Act, the Court must consider the best interests of the child to be the paramount consideration.</p> <p>In determining what is in the child's best interests, the matters that the Court must consider include the following matters:</p> <p>any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court considers relevant to the weight it should give to the child's wishes</p> <p>the nature of the relationship of the child with each of the child's guardians and with other persons</p> <p>the likely effect of any changes in the child's circumstances,</p>

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				<p>including the likely effect on the child of any separation from either of his or her guardians; and</p> <p>any other child, or other person, with whom he or she has been living</p> <p>the practical difficulty and expense of a child having contact with a guardian and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with each guardian on a regular basis</p> <p>the capacity of each guardian, or of any other person, to provide for the needs of the child, including emotional and intellectual needs</p> <p>the child's maturity, sex, background and culture (including any need to maintain a connection with the lifestyle, culture and traditions of the Aboriginal community) and any other characteristics of the child that the Court considers relevant</p> <p>the need to protect the child from physical or psychological harm</p> <p>the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's guardians</p>
			56	<p>Allowing opportunity for child to express wishes.</p> <p>Whether or not the child is represented by an Australian legal practitioner in any proceedings under this Act, the Court must</p>

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				allow the child a reasonable opportunity to give his or her own views personally to the Court as to his or her ongoing care and protection unless the Court is satisfied that the child is not capable of doing so.
			77	<p>Transfer of child protection orders to another State or New Zealand</p> <p>The Secretary may transfer a child protection order to a participating State (which includes a Territory or New Zealand) if, among other things, the Secretary considers that the same or a similar child protection order could be made under the child welfare law of that State.</p> <p>The Secretary must also obtain consent from the child's parents in some circumstances:</p> <p>(a) if the home order gives custody of the child to the Secretary, consent is required from the child's parents and any other person who is granted access to the child under the order; and</p> <p>(b) if the home order provides for supervision of the child or for supervised custody of the child, consent to a transfer is required from the child's parents.</p> <p>However, in the case of (b), if a parent of the child is residing in, or is intending to reside in, the relevant participating State, consent to the transfer is not required from that parent or from any other parent who consents to the child residing in that State.</p>

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				Note that decisions are reviewable by the Court, which may quash or substitute an order.
			95	<p>Offence to harbour or conceal child, &c.</p> <p>Knowing that a child is absent without lawful authority or excuse from the place in which the child has been placed or the person in whose custody the child has been placed by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order, a person must not:</p> <p>(a) harbour or conceal, or assist in harbouring or concealing, the child; or</p> <p>(b) prevent, or assist in preventing, the child from returning to that place or custody.</p>
			96	<p>Offence to remove, counsel or induce child to be absent without lawful authority, &c.</p> <p>If a child has been placed in a place or in the custody of a person by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order, a person must not directly or indirectly:</p> <p>(a) without lawful authority or excuse, withdraw the child from that place or custody; or</p> <p>(b) counsel, induce or assist a child to absent himself or</p>

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	<p data-bbox="759 443 965 539">Commonwealth Powers (Family Law) Act 1987</p>	TAS	3	<p data-bbox="1395 379 1800 408">herself from that place or custody.</p> <p data-bbox="1395 443 2011 472">Reference of certain matters relating to children.</p> <p data-bbox="1395 507 2123 804">The maintenance of children and the payment of expenses in relation to children or child bearing, the custody and guardianship of, and access to, children and the determination of a child's parentage for the purposes of the law of the Commonwealth, whether or not the determination of the child's parentage is incidental to the determination of any other matter within the legislative powers of the Commonwealth, are all matters that can be referred to the Commonwealth Parliament.</p> <p data-bbox="1395 839 2123 970">The referral does not include the matter of the adoption of children or the matter of the taking, or the making of provision for or in relation to authorizing the taking, of action that would prevent or interfere with:</p> <p data-bbox="1395 1005 2123 1206">(a) a Minister of the Crown or officer of the State, or an officer of an adoption agency that is approved under any law of the State, or any other person under certain provisions of the Adoption Act 1988, Children, Young Persons and Their Families Act 1997, Youth Justice Act 1997 (or another provision declared by proclamation to be relevant):</p> <p data-bbox="1395 1241 2085 1302">(i) having or acquiring the custody, guardianship, care, or control of children; or</p> <p data-bbox="1395 1337 2123 1398">(ii) instituting and conducting, or intervening in, proceedings under a law of the State in respect of the custody,</p>

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				<p>guardianship, care, or control of children;</p> <p>(c) the jurisdiction of the Supreme Court of Tasmania to make orders in respect of children who are in such custody, guardianship, care, or control; or</p> <p>(d) the jurisdiction of Tasmanian Courts under certain provisions of the Adoption Act 1988, Children, Young Persons and Their Families Act 1997, Youth Justice Act 1997 (or another provision declared by proclamation to be relevant) to make orders, or to take any other action, in respect of:</p> <p>(i) the custody, guardianship, care, or control of children; or</p> <p>(ii) access to children or the supervision of children.</p>
	Criminal Code Act 1924	TAS	186	<p>Abduction</p> <p>Any person who, by force, takes away or detains another person against that person's will with intent that the other person be married to, or have sexual intercourse with, any person, is guilty of a crime. The charge is referred to as 'Forcible abduction'.</p> <p>Any person who takes away or detains another person against that other person's will with intent that the other person be married to, or have sexual intercourse with, any person, is guilty of a crime. The charge is referred to as 'Abduction'.</p>
			189 and 190	Abduction of young persons

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				<p>Any person who unlawfully takes away, or causes to be taken away, an unmarried person under the age of 17 years out of the possession and against the will of a parent of that person or a person having the lawful charge or care of that person, is guilty of a crime. The charge is referred to as "Abduction of a young person under the age of 17 years."</p> <p>It is a defence to prove that the accused person did not know, or did not have reasonable grounds for believing, that the young person was in the lawful charge of the person out of whose possession the young person was taken.</p> <p>It is not a defence:</p> <p>(a) to prove that the young person suggested or consented to being taken away; or</p> <p>(b) to prove that the accused person believed on reasonable grounds that the young person was of or above the age of 17 years.</p>
			191	<p>Abduction of children: Harbours an abducted child</p> <p>Any person who unlawfully, by force or fraud takes away, or decoys or entices away, or detains, any child under the age of 14 years, with intent to deprive any parent, guardian, or other person having the lawful charge or care of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, is guilty of a crime. The charge is referred to as "Abduction of a child."</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>It is a defence to prove that the accused:</p> <p>(a) acted upon a claim of right to the possession of such child; or</p> <p>(b) is the mother of such child, if the child is illegitimate; or</p> <p>(c) acted in good faith upon a claim that he is the father of such child, if the child is illegitimate.</p> <p>Any person who, with any such intent as aforesaid, receives or harbours any such child, knowing it to have been so taken, decoyed, or enticed away, or detained, is guilty of a crime. The charge is referred to as "Harbouring an abducted child."</p>
			191A	<p>Kidnapping</p> <p>A person is guilty of a crime who:</p> <p>(a) with intent to extort or gain anything from, or procure anything to be done or omitted to be done, by any person, by a demand containing threats of injury or detriment of any kind to be caused to any person (whether by the offender or any other person) if the demand is not complied with, takes or entices away, or detains, the person in respect of whom those threats are made; or</p> <p>(b) receives or harbours the person in respect of whom the threats referred to in paragraph (a) are made knowing that person to have been taken or enticed away or detained as</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				mentioned therein.
	Guardianship and Custody of Infants Act 1934	TAS	7	<p>The charge is referred to as 'Kidnapping'.</p> <p>Power of Court to make orders in case of dispute</p> <p>In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding the matter as it shall think proper.</p>
			9	<p>Power of Court to remove guardian</p> <p>The Court, in its discretion, on being satisfied that it is for the welfare of the infant, may remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Act and may also, if it shall deem it to be for the welfare of the infant, appoint another guardian in the place of the guardian so removed.</p>
			10	<p>Power of Court to make orders as to custody</p> <p>The Court may, upon the application of the mother or father of any infant (who may apply without next friend), make such order as it thinks fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act, and in any case may make such order respecting the costs of the mother and the liability of</p>

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				the father for the same or otherwise as to costs as it may think just.
			11	<p>Guardianship in case of divorce or judicial separation</p> <p>In any case where a decree for judicial separation, or a decree either nisi or absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent, by reason of whose misconduct such decree is made, to be a person unfit to have the custody of the children, if any, of the marriage; and, in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children</p>
			13	<p>Power of Court to order repayment of costs of bringing up child</p> <p>If, at the time of the application for a writ or order for the production of a child, the child is being brought up by another person, the Court, in its discretion, if it orders the child to be given up to the parent, may further order that the parent shall pay to such other person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to all the circumstances of the case.</p>
			14	<p>Court in making order to have regard to conduct of parent</p> <p>Where a parent has:</p>

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				<p>(a) (a) abandoned or deserted his child; or</p> <p>(b) (b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties, the Court shall not make an order for the delivery of the child to the parent unless the parent has satisfied the Court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.</p>
			15	<p>Power of Court as to child's religious education</p> <p>Upon any application by the parent for the production or custody of a child, if the Court is of opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion from that in which the parent has a legal right to require that the child should be brought up, the Court shall have power to make such order as it thinks fit to secure that the child is brought up in the religion in which the parent has a legal right to require that the child should be brought up.</p>
			16	<p>Saving of power to consult child</p> <p>Nothing in this Act shall interfere with or affect the power of the Court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice.</p>
			18	<p>In case of separation deed between father and mother</p>

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				<p>No agreement contained in any separation deed made between the father and mother of an infant shall be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control thereof to the mother; but the Court shall not be bound to enforce any such agreement if it is of opinion that it will not be for the benefit of the infant to give effect thereto.</p>

9. Australian Capital Territory

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p>ARTICLE 10:</p> <p>1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.</p> <p>2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and</p>	No relevant legislation found			

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<p>freedoms of others and are consistent with the other rights recognized in the present Convention.</p> <p>NB: At the time Australia ratified the Convention, no relevant reservations were made by Australia.</p>				